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Attorney for Plaintiff,  
Axel Braun

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

Plaintiff provides this Separate Case Management Case which deviates from the Northern District's form Joint Case Management Conference statement because of the unique nature of the case.

On April 17, 2013, the Court issued an Order to Show Cause in which it instructed that “[b]y no later than May 6, 2013, the parties must file either (1) a joint case management statement, which includes a statement that they have reviewed the Local Rules with respect to their responsibilities; or (2) a written response to this Order to Show Cause why they should

1 not be sanctioned for their failure to timely file a joint case management statement.” Dkt. No.  
2 38.

3 Accordingly, Plaintiff files this Case Management Conference Statement. No other  
4 Parties have appeared.<sup>1</sup> Thus, Plaintiff files this separate case management conference  
5 statement in order to report on the progress of the case and to propose a schedule for the  
6 remainder of the case development.

7 The undersigned has read and understood the Local Rules and this Court’s Standing  
8 Order in Civil Cases. Plaintiff failed to file the Joint Case Management conference that was  
9 due on April 15, 2013 because it had not properly been calendared. It was a mistake for which  
10 Plaintiff’s counsel (the undersigned) sincerely apologizes.

11 **Defendant Doe 1/Y**

12 Y, the account holder SBC Internet identified as controlling the account from which  
13 Doe 1 accessed the Internet, filed a Motion to Dismiss for Misjoinder and/or for a Protective  
14 Order. Dkt. No.19. On December 18, 2013, Magistrate Judge Corley denied the Motion to  
15 Dismiss and granted in part the motion for protective order. Dkt. No. 32. On February 14,  
16 2013, this Court issued an Order adopting Magistrate Judge Corley’s Report and  
17 Recommendations, which was not challenged.

18 The subscriber, subsequently agreed to execute a declaration under penalty of perjury  
19 that he/she did not engage in the infringing activity. Plaintiff’s further investigation  
20 discovered unique facts that rendered it unlikely that Plaintiff would be able to discover Doe  
21 Number 1’s identity. Thus Plaintiff voluntarily dismissed its claims against him.

22  
23  
24  
25  
26 <sup>1</sup> Although Y filed a Motion to Dismiss or for a Protective Order, Plaintiff never  
27 named Y as a party to this action. In any event Plaintiff has voluntarily dismissed the claims  
corresponding to Y’s Internet account.

1 **Other Doe Defendants**

2 Plaintiff was unable to locate or identify a significant number of the Doe Defendants.  
 3 Other potential Defendants elected to enter settlement agreements. Accordingly, Plaintiff has  
 4 voluntarily dismissed all but five of the Defendants identified as Does in the original  
 5 Complaint. Plaintiff has filed a First Amended Complaint and will serve those Defendants  
 6 with a Summons and the First Amended Complaint within the next fourteen days.

7 **Newly Named Defendants**

8 Because the Motion to Dismiss filed at Docket No. 19 could have resulted in the  
 9 severance of Defendants, Comcast refused to respond to Plaintiff's subpoena until a the Court  
 10 issued a final order on the Motion. The Court issued its Order Accepting the Report and  
 11 Recommendations on the Motion on February 14, 2013. Dkt. No. 36. Comcast delivered the  
 12 responsive data on March 12, 2013. Plaintiff sent letters to the identified subscribers in an  
 13 attempt to investigate and where appropriate to seek to resolve claims prior to amending the  
 14 Complaint. Thus, it was not practical to finalize the list of Defendants against whom Plaintiff  
 15 would proceed until very recently. As explained in the previous Case Management  
 16 Conference Statement, Plaintiff believed it was best to amend the Complaint once, after it had  
 17 received response from *all* subpoenaed ISPs and had opportunity to communicate with  
 18 subscribers. That is how Plaintiff has proceeded.

19 Plaintiff amended the Complaint today and will obtain Summons and have the  
 20 named Defendants served with Summons and the First Amended Complaint within fourteen  
 21 days.

22 **Related Cases**

23 On August 31, 2012 the Court ordered this action related to four other Actions. The  
 24 Court stated in its order that it would reschedule the case management conferences in those  
 25 cases, but no subsequent order issued. The cases generally parallel this action.

As set forth below, Plaintiff has voluntarily dismissed two of those actions in their entirety. In the other two, Plaintiffs has voluntarily dismissed all but one defendant and has amended the Complaints accordingly. Plaintiff will serve a Summons and Complaint on the Defendants in those two actions within fourteen days as well.

- *Axel Brun v. Primary Distributor Doe Number 1 and Defendant Does 2 through 155*, 12-4102 YGR (JSC) - Voluntarily Dismissed without Prejudice;
- *Axel Braun v. Than Pham*, 12-4103 YGR (JSC);
- *Axel Brun v. Primary Distributor Doe Number 1 and Defendant Does 2 through 92*, 12-4104 YGR (JSC) - Voluntarily Dismissed without Prejudice; and
- *Axel Braun v. Benny Yu*, 12-4105 YGR (JSC).

Dated: May 6, 2013

/s/ D. Gill Sperlein

Counsel for plaintiff

## [PROPOSED] CASE MANAGEMENT ORDER

The Case Management Conference currently scheduled for May 15, 2013 at 2:00 p.m. is rescheduled for June 24, 2013 at 2:00 p.m. Plaintiff must have all named Defendants served prior to the Case Management Conference.

## IT IS SO ORDERED.

Dated:

YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE